RECENT CASE NOTES

BANKRUPTCY—JURISDICTION OF A REFEREE IN PLENARY ACTIONS.—The trustee in voluntary bankruptcy brought a bill in equity before the referee to set aside an alleged fraudulent chattel mortgage given by the bankrupt to his brother, under which the latter had obtained possession of the property. Objection to the jurisdiction was overruled by the referee, sustained by the District Court, and overruled again by the Circuit Court of Appeals. *Held,* that the referee had no jurisdiction over a plenary suit. *Weidhorn v. Levy* (1920, U. S.) 45 Am. B. R. 493, 40 Sup. Ct. 534.

A referee as well as any other bankruptcy court may determine in a summary proceeding all claims as to property in the custody of the trustee or any other officer of the bankruptcy court. *White v. Schloerb* (1900) 178 U. S. 542, 20 Sup. Ct. 1007, 4 Am. B. R. 178; see *Mueller v. Nugent* (1901) 184 U. S. 1, 13, 22 Sup. Ct. 269, 274; Collier, *Bankruptcy* (11th ed. 1917) 541. If the property is in the possession of an adverse claimant, the question as to title can be determined in a plenary action only. *Louisville Trust Co. v. Comingor* (1902) 184 U. S. 18, 22 Sup. Ct. 293, 7 Am. B. R. 421; see COMMENTS (1918) 5 VA. L. REV. 272. A few courts have held that the referee has jurisdiction in plenary actions on the ground that the fundamental purpose of the U. S. Bankruptcy Act was to place a bankruptcy court in every county of the United States, and that refusing jurisdiction to the referee in such cases would violate the spirit of the Act. *In re Andrew J. Murphy* (1900, D. Mass.) 3 Am. B. R. 499; *In re Shults* (1904, W. D. N. Y.) 11 Am. B. R. 690. This objection does not seem very forceful, since under sec. 70 (e) state courts have concurrent jurisdiction in such plenary suits and consequently the actions remain localized. The majority of lower federal courts refused to give the referee jurisdiction in plenary proceedings, because the referee has not the necessary machinery at hand for the conducting of a plenary suit with its requirements of formal service of process, rule days, etc. *In re Carlile* (1912, D. N. C.) 199 Fed. 612, 29 Am. B. R. 373; *In re Overholzer* (1909, D. N. D.) 23 Am. B. R. 10; 1 Remington, *Bankruptcy* (2d ed. 1915) sec. 545. The court in the instant case bases its decision on the ground that a plenary suit is not a "proceeding" within the meaning of sec. 12 (1) of the General Orders, but an entirely independent action. The decision in the instant case finally settles this much disputed question in accordance with the majority of the previous decisions in the lower federal courts.

CONTRACTS—AUCTIONS—KNOWLEDGE BY PURCHASER OF CONDITIONS ANNOUNCED AT COMMENCEMENT OF SALE NOT NECESSARY.—The plaintiffs, through an auctioneer, offered certain land for sale at public auction with certain restrictions. The property was knocked down to the defendant, who thereupon signed memoranda of sale and gave his check in payment of ten per cent of the purchase price. He later stopped payment on the check and refused to take the land, on the ground that he did not hear the terms read at the beginning of the sale, and that he bought the land under the impression that the property was unrestricted. There was some evidence that he was led on to bid by representations of the auctioneer. The plaintiff brought this action for specific performance of the contract. *Held,* that specific performance should not be granted. *Josephy v. Golden* (1920, N. Y. Sup. Ct.) 113 Misc. 284, 184 N. Y. Supp. 549.

It is generally considered that a contract is entered into at an auction sale when the auctioneer knocks down the thing to be sold to the highest bidder. 1 Williston, *Contracts* (1920) 39. The auctioneer is the agent of both vendor and purchaser with sufficient authority to bind the vendee to the terms of the